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December 27, 2002

Dockets Management System
U.S. Department of Transportation
400 Seventh Street SW
Room PL 401
Washington, DC 20590-0001

Re: **Docket No. RSPA-2002-13658 (HM-215E); Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions Comments on notice of proposed rulemaking**

The Conference on Safe Transportation of Hazardous Articles, Inc. ("COSTHA") hereby offers its comments on the notice of proposed rulemaking (NPRM) published in the *Federal Register* on December 3, 2002, under Docket No. RSPA-2002-13658 (HM-215E) entitled **Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions.**

COSTHA is a non-profit organization representing manufacturers, shippers, distributors, carriers, freight forwarders, trainers, packaging manufacturers and others associated with the hazardous materials transportation industry. These entities are involved in all aspects of hazardous materials commerce, including transportation of hazardous materials, hazardous substances, marine pollutants, and hazardous wastes. COSTHA members represent greater than \$140 billion in commerce. In addition to promoting regulatory compliance and safety in hazardous materials transportation, COSTHA assists its members and the public in evaluating the practicality and efficacy of laws, rules and regulations for the safe transportation and distribution of hazardous materials. Since many members are directly involved with the offering for transport and transporting of a

wide variety of hazardous materials in international commerce, COSTHA has significant interest in this NPRM.

In this submission COSTHA will limit our specific comments to the incorporation by reference portion of the Notice for which the comment period will close on January 2, 2003, and to the reference to petitions in the Supplementary Information portion of the Docket. Additional comments will follow on those portions of the Docket for which the comment period closes on February 3, 2003.

COSTHA commends RSPA for the significant steps already taken to achieve the ultimate goal of international harmonization. In order to facilitate seamless transportation of dangerous goods in international commerce by all modes of transport and ensure the continued position of the United States as a key participant in the global marketplace, the US DOT must continue to align 49 CFR with those standards set out by the United Nations in their Model Regulations. Timely adoption by reference of the most current regulations set forth by the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO), updated to include the latest revision to those UN Model Regulations, is essential to harmonization. Most of the provisions of Amendment 31-02 of the IMDG Code, authorized for use in international vessel transportation as of January 1, 2003 and effective January 1, 2004, will for the first time become mandatory rather than recommendatory, making the adoption by reference even more critical. While RSPA has stated their intention to address the mandatory code issue under a separate rulemaking prior to the effective date of January 1, 2004, many shippers and carriers will be modifying management systems and computer resources to recognize the authorized use of the Amendment 31-02 provisions during the ensuing weeks to ensure uninterrupted commerce on and after January 1, 2003. COSTHA encourages RSPA to continue their efforts toward achieving as near as possible total harmonization in this future rulemaking.

This NPRM proposes numerous modifications regarding entries in the Hazardous Materials Table, descriptions on shipping papers, marking requirements for limited quantity packaging, revisions of restrictions for explosives transported in freight containers, revisions to clarify special provisions regarding aerosols, and other amendments to 49 CFR intended to reflect recommendations set forth by the UN Committee of Experts on the Transport of Dangerous Goods. COSTHA supports in principle the RSPA initiative to adopt the proposed changes since, for the most part, they mirror those provisions of the IMDG and ICAO that are being adopted by reference. However, we strongly urge RSPA to conduct a timely outreach program through COHMED and all other channels possible to ensure that state, local, and federal enforcement officers are well aware of these amendments prior to January 1, 2003 authorization date. Enforcement personnel may also be confused by the transition schedule as proposed at §171.14 since the mandatory IMDG Code will become effective January 1, 2004, for international ocean transport and the domestic transition will not become effective until ten months later on October 1, 2004. They must recognize these authorizations and the implications of the difference in transition schedules in order to prevent unnecessary obstacles and delays in the safe and efficient transportation of hazardous materials.

General Comment

Included in III. Summary of Regulatory Changes by Section, [72040] RSPA has stated they are responding to three petitions for rulemaking in their proposal to amend section 172.202, to require the entry for subsidiary hazards in the shipping description. The references are to petitions P-1363, P-1398, and P-1402.

On August 21, 2001, COSTHA submitted a petition for rulemaking pursuant to §106.31, requesting amendment to §172.202 to require the subsidiary hazard class entry with the basic description for a hazardous material. On September 28, 2001, we received a response from Gail Twitty, Transportation Assistant, Office of Hazardous Materials Standards, assigning our petition number P-1418. Since this petition requested the regulatory amendment as proposed in HM-215E, our members feel that the COSTHA petition P-1418 should be included in the reference. RSPA should be cognizant that trade association members often cite accomplishments in influencing beneficial regulatory rulemaking as one of the means of justification for continued membership. In an industry where it is often difficult for employees to exhibit tangible results and occupational productivity, our members take great pride in positively influencing transportation safety and documenting results.

In the petition COSTHA pointed out some inconsistent regulatory requirements that are historically problematic to carriers. The regulation at §172.506 states that no motor carrier may transport a hazardous material in a motor vehicle unless the required placards are affixed thereto. The carrier is further required by §172.300(b) to mark the transport vehicle when assigned that function by Subpart D. While less-than-truckload (LTL) carriers are required to mark and placard vehicles and other cargo transport units based on threshold quantity limits expressed in units of weight, their obligations may be frustrated by the existing shipping paper regulations at §172.202(a)(5) that do not require shippers to declare such weight on the shipping documents. In less than truckload quantities (LTL), the operator must calculate the aggregates gross weight of the hazardous materials on the vehicle at each loading or discharge location. Carriers, and for that matter inspection personnel are not prepared or equipped to make conversions from a volumetric liquid measure to such a weight measure.

The exception for entering the weight of cylinders containing compressed gases might be warranted for pick-up and delivery operations by private or contract carriers, however LTL carriers must know the weight of these shipments since the placarding requirements for Table 2 materials of Class 2.1 and 2.2 as well as the vehicle marking requirements are based on such weight. Examples of marking and placarding requirements based on the weight of the hazardous materials are codified at §§172.301(a)(3), 172.313(c)(2) and (3), 172.324, 172.504(b), 172.504(c), and 172.505(b). The unique U.S. requirements for marking and placarding tied to the weight or mass of certain hazardous materials compel resolution of this problem.

In our petition COSTHA suggested language at §172.205(a)(5) to state:

(5) Except for empty packagings (see §173.29 of this subchapter), cylinders for Class 2 (compressed gases) materials transported by private or contract carriers, and bulk packagings, the total quantity (by net or gross mass, ~~capacity, or as otherwise appropriate~~) including the unit of measurement, of the hazardous material covered by the description (e.g., "800 lbs", "~~55 gal.~~", "3629 kg", or "~~208 L~~"). For cylinders for Class 2 (compressed gases) materials meeting the above requirements and bulk packagings, some indication of the total quantity must be shown (e.g., "10 cylinders" or "1 cargo tank").

§172.202, paragraph (c), should also be amended to require:

(c) The total quantity, including the gross mass of the material covered by ~~one~~ each description must appear before or after, or both before and after, the description required and authorized by this subpart. The type of packaging and destination marks may be entered in any appropriate manner before or after the basic description. Abbreviations may be used to express units of measurement and types of packagings.

The NPRM proposes to amend §172.202(a)(5) to require additional entries for the number and kind of packages and the examples of descriptions of units of measure and number and type of packagings include entries for net mass and gross mass in kilograms in the options shown. However the regulatory text still allows the total quantity to be entered as a volumetric measure. The problem will still exist as unique requirements of the US DOT for marking and placarding are not based on volumetric measure. Carriers and inspection personnel are not prepared or equipped to make conversions from a volumetric liquid measure to a weight measure to comply with the marking and placarding requirements.

Following a careful review of additional proposals within the NPRM, COSTHA will submit comments on behalf of our membership on the portion of the rulemaking for which the comment period ends on February 3, 2003.

COSTHA would like to express our appreciation for having the opportunity to provide our comments on this rulemaking and we hope you will find them helpful. We would further offer our assistance should you require clarification or expansion on our positions. Please feel free to contact the COSTHA office at 703/451-4031, fax 703/451-4207, or e-mail: mail@costha.com.

Sincerely,

A handwritten signature in dark ink, appearing to read "John V. Currie", with a large, stylized initial "J" and "C".

John V. Currie
COSTHA Administrator